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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/551,409	12/20/2005	Luciano Alcidi	71977	4484
23872 7590 03/10/2009 MCGLEW & TUTTLE, PC P.O. BOX 9227 SCARBOROUGH STATION SCARBOROUGH, NY 10510-9227				
EXAMINER				
HELLING, KAITLYN ELIZABETH				
ART UNIT		PAPER NUMBER		
3739				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/551,409

Applicant(s)

ALCIDI, LUCIANO

Examiner

KAITLYN E. HELLING

Art Unit

3739

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 October 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,4,5 and 7-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) 1,4,5 and 7-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 October 2008 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB-08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. The Amendment filed on October 6, 2008 has been entered. Claims 1, 4, 5 and 7-15 remain pending in the application. Claims 2, 3 and 6 remain cancelled.

Claim Rejections - 35 USC § 102

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
3. Claims 1, 5, 7, 8, 10, 11, 13 and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. 6,312,426 B1 to Goldberg et al. (Goldberg)

Regarding claim 1, Goldberg teaches an apparatus (title) comprising generating means (5, Fig. 1) for generating radio-frequency electromagnetic radiation (Col. 6, line 39-41), connectable to application means (1 or 2, Fig. 1) for the application of said radiation to a skin portion of a human body, said application means comprising a plate shaped active electrode (1 or 2, Fig. 1) and a reference or return electrode (claims and Col.1, lines 23-37), said active electrode having a skin contact surface (inherent in that the electrodes are placed on the external surface of a limb (see Col. 4, lines 3-8), said active electrode being provided with a sensor means (Col. 7, lines 39-45) for the detection of skin temperature of the skin portion (Col. 7, lines 39-45), said sensor means including at least a sensor incorporated in said active electrode (Col. 7, lines 39-45).

Regarding claim 5, Goldberg teaches the apparatus of claim 1 as well as wherein said sensor means for the detection of the skin's temperature are connected to a control circuit connectable to and acting on said generating means for generating radio-

frequency radiation (inherent in that the generator can be automatically controlled with respect to certain parameters such as temperature (see Col. 5, lines 8-16 and Col. 7, lines 39-45)).

Regarding claim 7, Goldberg teaches the apparatus of claim 1 as well as wherein structure of the active electrode is complementary shaped with respect to the skin portion of the human body region of the patient to be treated (Col. 9, lines 35-51).

Regarding claim 8, Goldberg teaches the apparatus of claim 1 as well as wherein the reference electrode has dimensions larger than those of the active electrode (Col. 1, lines 22-41).

Regarding claim 10, Goldberg teaches the apparatus of claim 1 as well as further comprising means for adjusting the temperature reached on the skin and able to vary output power in order to keep the skin temperature at a present value (Col. 5, lines 1-22).

Regarding claim 11, Goldberg teaches the apparatus of claim 1 and as well as a means for measuring the output power and the impedance in correspondence of the application means (Col. 5, lines 1-23).

Regarding claim 13, Goldberg teaches the apparatus of claim 1, but not a means for connection with an electronic processor (Inherent in that it will necessarily be connected to a control mechanism such as a microprocessor or the like (see Col. 5, lines 8-19).

Regarding claim 14, Goldberg teaches an apparatus (title) comprising generating means (5, Fig. 1) for generating radio-frequency electromagnetic radiation (Col. 6, line

39-41), connectable to application means (1 or 2, Fig. 1) for the application of said radiation to a skin portion of a human body, said application means comprising an plate shaped active electrode (1 or 2, Fig. 1) and a reference or return electrode (claims and Col.1, lines 23-37), said active electrode having a skin contact surface (inherent in that the electrodes are placed directly on the external surface of a limb (see Col. 4, lines 3-8), said active electrode being provided with a sensor means (Col. 7, lines 39-45) for the detection of skin temperature of the skin portion (Col. 7, lines 39-45), said sensor means including at least a sensor incorporated in said active electrode (Col. 7, lines 39-45) and a control means for controlling an amount of radio-frequency electromagnetic radiation generated via said generating means based on the skin temperature of the skin portion detected via said skin temperature sensor (Col. 5, lines 8-20 and Col. 7, lines 39-45).

Claim Rejections - 35 USC § 103

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
5. Claims 4 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. 6,312,426 B1 to Goldberg et al. (Goldberg).

Regarding claims 4 and 15, Goldberg teaches the apparatus as described above, but does not teach the sensor means can be removably associated with the active electrode and the associated structure. However, it has been held that simply making a part separable does not render the claims patentable distinct from the noted prior art as it would have been obvious to one having ordinary skill in the art at the time of the

invention to have made the sensor removably associated with the active electrode if it were desired for any reason to be able to use the electrode without the benefit of the sensor means. This removable quality would have necessitated the structural requirements of a connector corresponding to the sensor and a complimentary seat within the matching electrode.

6. Claims 9 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. 6,312,426 B1 to Goldberg et al. in view of U.S. 5,660,836 to Knowlton (Knowlton).

Regarding claim 9, Goldberg teaches the apparatus of claim 1 as well as more than one active electrode (1 and 2, Fig. 1), but not the additional electrodes connected to a switch device able to connect in sequence said active electrodes to said generating means for generating radio-frequency radiation. Knowlton, however, teaches a method and apparatus for controlled contraction of collagen tissue (title) which uses a generator (28, Fig. 1), an active electrodes (26, Fig. 1), a reference electrode (Col. 5, lines 33-37), a temperature sensor means (52, Fig. 1) as well as additional active electrodes connected to a switch device able to connect in sequence said active electrodes to said generating means for generating radio-frequency radiation (Col. 8, lines 19-27). It would have been obvious to one having ordinary skill in the art at the time of the invention to have modified Goldberg to have included the switch device of Knowlton as Knowlton teaches that it is advantageous to control and vary the process variables based on monitoring of multiple sites on the body as well as providing multiplexing and determination of which RF electrode is activated.

Regarding claim 12, Goldberg teaches the apparatus of claim 1, but not a means to present the duration of the treatment. Knowlton, however, teaches a timer circuit as a means to preset the duration of the treatment (Col. 8, lines 14-19). It would have been obvious to one having ordinary skill in the art at the time of the invention to have modified Goldberg with the timer circuitry of Knowlton in order to allow for better control of the parameters as taught by Knowlton (Col. 8, line 14-19).

Response to Arguments

7. Applicant's arguments, see Remarks page 8-11, filed October 6, 2008, with respect to the rejection(s) of claim(s) 1, 5, 7, 8, 9-14 under 35 U.S.C. 102(b) and 103(a) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made as disclosed above.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. U.S. 6,315,776 B1 to Edwards et al. which teaches a thin layer ablation apparatus.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to KAITLYN E. HELLING whose telephone number is (571)270-5845. The examiner can normally be reached on Monday - Friday 7:30 a.m. to 5:00 p.m. EDT.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda C.M. Dvorak can be reached on (571)272-4764. The fax phone

number for the organization where this application or proceeding is assigned is 571-273-8300.

10. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/KAITLYN E HELLING/
Examiner, Art Unit 3739

/Roy D. Gibson/
Primary Examiner, Art Unit 3739